

## REMARKS

Claims 1, 2, 4-6, 10, 11, 13, 15-18, and 22-40 are pending in the application. All claims are currently rejected. Claims 35 and 39 have been amended. Claims 1, 2, 4-6, 10, 11, 13, 15-18, and 22-40 remain pending in the application. Favorable reconsideration and allowance of this application is respectfully requested in light of the following remarks.

### I. Drawings

1) The drawings are objected to under 37 CFR 1.83(a) for failing to show the “actuator” (Claims 1, 6) and “hydraulic cylinder” (Claims 22, 25, 28).

Per Applicant’s June 8, 2004 Amendment, Applicant again notes the Examiner first made an objection to the term “actuator” in a March 5, 2003 Office Action. Accordingly, Applicant corrected the drawings to illustrate the actuator in the July 17, 2003 Amendment. The Examiner then accepted the drawing change as noted in the August 14, 2003 Office Action. However, in the Office Action dated December 10, 2003, the Examiner issued the same actuator objection and directed Applicant’s other outside counsel to delete the actuator element from the pending claims (note, however, that Applicant did NOT amend the previously-amended Fig. 3 which had already been accepted by the Examiner).

Applicant and Examiner then conducted a May 11, 2004 interview, and the Examiner stated in the Interview Summary “Examiner will consider arguments and amendment favorably, in view of Applicant’s statement that utilizing an actuator to move the segments relative to each other (such as pivoting) would be well known to one skilled in the art”. Applicant then respectfully requested (in Applicant’s June 8, 2004 Amendment) re-entry of the term “actuator” within the pending Claims 1, 6, 11, 22, 25, and 28 and acceptance of the July 17, 2003 amended drawings.

The Examiner again made the very same objection to the claim term “Actuator” in the presently outstanding Office Action. Applicant fails to understand the basis for the current objection to the drawings. Fig. 3 has already been amended and accepted by the Examiner as-amended. Nevertheless, Applicant again hereby submits a drawing sheet bearing Fig. 2 and Fig. 3, wherein Fig. 3 has been amended to show actuator that has been enumerated as hydraulic cylinder 21.

Applicant earnestly solicits the Examiner's formal acceptance and recognition of this drawing change or, on the other hand, a specific basis for the continuing objection to the drawings.

2. The Examiner further notes in this section of the Office Action that "the concept of using a hydraulic actuator to move two pieces relative to each other is well known. However, the Applicant has not shown in the drawings and in the disclosure how a newly proposed actuator would be novel in view of the state of art." The Examiner also states "the hydraulic actuator appears to be subsequent to an Examiner's objection, and after thought addition to the drawings in order to overcome either the objections to the drawings or an attempt to differentiate from those augers which do not use or require a hydraulic actuator."

Without commenting on the accuracy of the Examiner's statements, Applicant fails to see the relevance of either statement to the issue of whether the drawings, in their current form, support the claims. Clearly Fig. 3 illustrates an actuator as a hydraulic cylinder and, as a result, provides support for each and every claim that receives an actuator or hydraulic cylinder.

Furthermore, in response to the Examiner's statements, Applicant directs the Examiner to Page 8, lines 7-9 of the specification as originally filed (i.e., before any Examiner's objection or citation of prior art) which states "In the preferred embodiment, the actuator includes a hydraulic cylinder ..." Clearly, Applicant recognized the benefits of an actuator, and specifically a hydraulic actuator, long before the present application was ever examined.

Moreover, Applicant has identified no provision in the MPEP authorizing examination of drawings based on such a subjective characterization of the Applicant's motive for including an element as part of a detailed description or as part of an invention as claimed.

In this case, Fig. 3 as previously amended (and accepted) clearly illustrates an actuator as a hydraulic cylinder, thereby clearly supporting the claim language "actuator" and "hydraulic cylinder". Once it has been determined that the drawings support the claims, the next step is to determine whether the claims are patentable over the prior art, as will now be discussed.

## II. Claim rejections under 35 U.S.C. §103

Claims 1-2, 4-6, 8, 10-11, 13, 15-18, and 22-40 are rejected under 35 USC 103(a) as being unpatentable over Pool in view of Barinov. Before discussing each claim in view of the prior art, Applicant believes that a brief summary of the prior art will assist the Examiner when reconsidering the claims of the present application.

### 1. Summary of Prior Art

Applicant notes that the Examiner previously relied on Pool (in combination with Meharry) in a 103 rejection in the August 14, 2003 Office Action. In the August 14 Office Action, the Examiner conceded that Pool fails to disclose coupling the first and second segments in a side-by-side arrangement when in storage by using a hinged connection... (See Paragraph 5, Page 5 of August 14 Office Action). The Examiner, at the time, combined Pool with Meharry. However, in response to Applicant's October 16, 2003 Amendment, The Examiner withdrew the Pool/Meharry rejection and instead relied on other prior art in the subsequent December 10, 2003 rejection.

It appears now that the Examiner is again citing Pool against the pending claims. However, Pool suffers from the very same drawbacks identified by the Examiner in the August 14, 2003 Office Action. Specifically, Pool fails to teach or suggest coupling the first and second segments in a side-by-side arrangement. Furthermore, as the Examiner concedes in the present outstanding Office Action, Pool fails to disclose a coaxial pivoted hinge connection between the first and the second segments (See segments 22 and 90 in Fig. 1; See also Col. 5, lines 21-22: "a fixed extension conveyor 90 may be provided").

The Examiner is attempting to overcome the deficiencies of Pool by citing Barinov as disclosing hingedly and pivotally connecting a second segment for giving wider range of use of the discharge auger system. Applicant notes that this characterization of Barinov fails to cure the above-mentioned deficiencies of Pool as recognized by the Examiner, namely 1) coupling the first and second segments in a side-by-side arrangement, and 2) a coaxial pivoted hinge connection between the first and the second segments. For this reason alone, the Examiner has failed to make a *prima facie* case in support of the rejections of the claims based on obviousness.

Furthermore, when Pool and Barinov are properly combined, they fail to address Pool's deficiencies. First, as illustrated in Fig. 1, Barinov discloses a first segment 8 and a

second segment 25 that are not in a horizontal side-by-side relationship when in a storage position. Rather, segments 8 and 25 are in a one-below-the-other relationship.

Secondly, Barinov teaches that in order to provide first segment 8 that is coaxial with second segment 25 (Figs. 1-3), the segments 1) are disposed at the rear of the vehicle, and 2) extend along a vertical plane. If Barinov teaches that the infeed section of first segment 8 is horizontally disposed. Furthermore, if Barinov's segments 8 and 25 were installed in Pool's combine in the manner suggested by Pool (i.e., on top of the combine), the combine would interfere with the vertical pivoting of the auger segments, and no reasonable expectation of success would accompany the combination. Accordingly, a skilled artisan looking to modify Pool based on the teachings of Barinov to include the co-axial relationship would be motivated to attach the segments at the rear of Pool's combine in a vertical plane, and direct the infeed section of the first segment horizontally into the hopper for the purposes of avoiding interference with the combine.

Any attempt to combine Pool and Barinov for the purposes of producing horizontally extending coaxial segments as presently claimed 1) would run contrary to the teachings of Pool and Barinov, and 2) would be based wholly on impermissible hindsight, based on Applicant's disclosure. No teaching or suggestion exists in either reference that it would be desirable to pivotally connect first and second segments of an unloading auger in a horizontal plane and in a side-by-side relationship, wherein the first and second segments connect coaxially when the auger is in an "unloading" position.

## 2. Analysis of the pending claims in view of the prior art

### A. Independent Claim 1

Claim 1 recites several elements not taught or suggested by Pool or Barinov, either alone or in combination. To begin, claim 1 recites that a first segment is pivotally coupled to a second segment, and that the pivot is in a substantially horizontal plane. Pool clearly fails to pivotally connect segments 22 and 90, as conceded by the Examiner. While Barinov discloses a first segment 8 and second segment 25 that are pivotally connected, the pivot is in a vertical plane as opposed the horizontal plane as claimed (compare Barinov Fig. 2 to Applicant's Figs. 4-5). Furthermore, no teaching or suggestion is present in either cited reference to pivotally attach the segments via a horizontally disposed pivot. The pivot

enables the segments to be disposed in a horizontal side-by-side orientation when stored which, as noted above, is not attainable by the combination of Pool and Barinov.

Additionally, claim 1 recites an infeed section coupled to an outlet of the storage bin, and that the segments have a coaxially connected unloading position while maintaining the infeed section in a substantially vertical orientation. Barinov clearly illustrates that coaxial segments 8 and 25 are attainable with the infeed section extending horizontally into the storage bin. Furthermore, no teaching or suggestion is present in Pool to render segments 22 and 90 coaxial while maintaining the infeed section in its vertical orientation. Rather, if Pool adopted Barinov's auger, the infeed section would extend horizontally into the hopper as taught by Barinov, and segments 22 and 90 would be vertically disposed.

The cited combination thus differs structurally and functionally compared to the invention recited in claim 1. Furthermore, the claim 1 invention is capable of achieving advantages not recognized in the prior art (See present application, pp 3-4). Accordingly, independent claim 1 and corresponding dependent claims 2, 4-5, 15, and 22-23 are allowable over the cited prior art.

#### B. Independent Claim 6

Claim 6 likewise recites an unloading auger including a horizontal section that includes a first segment and a second segment that are horizontally disposed when the auger is disposed in both a storage and an unloading position. Claim 6 further recites a hinged joint pivotally connecting the first and second segments. The pivot is in a substantially horizontal plane between the storage position and the unloading position. As discussed above with respect to independent claim 1, even if the references are combined in the manner suggested by the Examiner, the combination fails to produce a pivot in a substantially horizontally plane. Accordingly, independent claim 6 and corresponding dependent claims 8, 10-11, 13, 16, and 24-27 are allowable over the cited prior art.

#### C. Independent claim 17

Independent claim 17 likewise recites elements not taught or suggested in the cited prior art. To begin, recites an auger including first and second segments pivotally connected. Additionally, claim 17 recites a safety mechanism for preventing said crop material from spilling out when said auger is in said storage position. As Applicant noted with respect to then-pending claim 4 in the October 16, 2003 Amendment, Pool can operate with one

segment or with the second segment in the storage position, meaning that the auger does not have to stop operating when the second segment is in the storage position. Pool fails to disclose any desire to prevent the accidental release of grain. Likewise, the Examiner has pointed to no teaching or suggestion in Barinov of a safety mechanism to prevent the auger from driving livestock feed out of the auger when in the storage position.

Accordingly, claim 17 achieves advantages not recognized or attained by the cited prior art, even when combined in the manner suggested in the Office Action. Accordingly, Applicant asserts that independent claim 17 and corresponding dependent claims 18 and 28-34 are allowable over the cited prior art.

#### D. Claim 35

Independent claim 35, as amended, recites a method for moving an auger of an agricultural combine between an unloading position and a storage position. The method includes the step of pivotally folding at least one of the first segment and second segment in a substantially horizontal plane relative to the other. Clearly Barinov discloses pivotally folding segments 8 and 26 in a vertical plane relative to one another, and thus fails to teach or suggest the claimed step of pivotally folding either segment 8 or 26 in a substantially horizontal plane. Pool fails to teach pivotally connecting segments 22 and 90.

Furthermore, claim 35 recites that the first and second segments are in a side-by-side relationship when said auger is in said storage position. Barinov's segments 8 and 25 are clearly in a one-above-the-other relationship when stored, while Pool's segments 22 and 90 are likewise not side-by-side when stored.

Claim 35 thus presents steps that are not recognized or achieved by the combination of prior art references. Applicant therefore asserts that independent claim 35 and corresponding dependent claims 36-38 are allowable over the cited prior art.

#### E. Claim 39

Independent claim 39, as amended, recites a method of moving an auger of an agricultural combine between an unloading position and a storage position. The method includes the steps of pivoting a horizontally disposed outfeed auger in a substantially horizontal plane. The outfeed auger including at least a first segment and a second segment, the first segment being pivotally connected to said second segment. The method further

includes pivotally folding the second segment in a substantially vertical plane relative to the first segment while maintaining the infeed segment in a substantially vertical orientation.

As discussed above, Pool fails to disclose pivotally connecting segments 22 and 90. While Barinov's segment 25 is pivotally connected to segment 22, the infeed segment extends horizontally into the storage bin. Accordingly, neither reference, either alone or in combination, has achieved a method for pivotally folding one segment relative to the other while maintaining the infeed segment in a substantially vertical orientation. As noted above, if Barinov's segments 8 and 25 were integrated into Pool above Pool's combine, the vertical translation of the segments would interfere with the combine (Barinov's end 29 is below infeed segment 17). Accordingly, even when the references are combined, no teaching or suggestion exists for maintaining the infeed segment substantially vertically while pivoting the auger segments relative to each other.

Accordingly, independent claim 39 and corresponding dependent claim 40 are allowable over the cited prior art.

#### **IX. Conclusion**

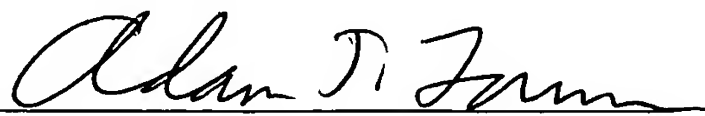
Applicant has introduced no new matter in making the above amendments and antecedent basis exists in the specification and claims as originally filed for each amendment.

In view of the above amendments and remarks, Applicant believes all pending claims of the present application recite patentable subject matter and allowance of the same is requested. The Examiner is invited to contact the undersigned at the number below if such would advance the prosecution of this application.

No fee is believed to be due for the filing of this communication. However, if an additional fee is required for this or any other communication, please charge Deposit Account No. 17-0055 in the amount of the fee.

Respectfully submitted,

Dennis P. Silver

By:   
Adam J. Forman  
Reg. No. 46,707  
Attorney for Applicant  
Quarles & Brady

411 E. Wisconsin Avenue, Suite 2040  
Milwaukee WI 53202-4497  
(414) 277-5405

MKE\5639619.doc